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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

FISCHER, JUSTIN R

ART UNIT PAPER NUMBER

1733

DATE MAILED: 11/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/055,966

Applicant(s)

SMITH ET AL.

Examiner

Justin R. Fischer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 October 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,4 and 6-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4 and 6-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 21, 2005 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 29 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what the language "adjacent threads" is attempting to describe. It appears that the language might be directed to an embodiment in which adjacent tread portions are differently colored. Applicant is asked to clarify the scope and description of the claimed invention without the introduction of new matter.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 8-12, 14-20, 22, 25, 27, 28, and 30-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leguillon (US 1,989,703, newly cited). Leguillon discloses a tire in which an outer tire sidewall surface contains a multi-colored design or picture, as best depicted in Figures 4-11. In this instance, the design or pattern depicted in the tire of Figure 6 is seen to constitute a colored picture. It is further noted that Leguillon states, "durable decorative scene comprising shaded and blended color effects, multi-color trademarks, and like designs are readily executed on almost any article of rubber" (Page 3, Lines 40-43). Thus, it is clear that Leguillon envisioned the formation of a multi-colored picture on a tire sidewall (such a picture is depicted in Figures 8 and 10). As to the portion of the sidewall surface that is covered with the above noted multi-colored picture, one of ordinary skill in the art at the invention would have found it obvious to cover at least 50% of the sidewall depending on the desired aesthetic effect. It is emphasized that the degree to which the colored picture covers the tire outer surface represents an aesthetic characteristic that does not contribute to the mechanical function of the tire. Absent any conclusive showing of unexpected results, one of ordinary skill in the art at the time of the invention would have found it obvious to form the multi-colored picture of Leguillon over at least 50% of the outer sidewall surface. Lastly, while it is unclear if the figures of Leguillon are working drawings, the figures appear to depict the inclusion of a multi-colored picture over a significant portion of the sidewall.

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As to claims 8 and 9, Figures 4 and 6 suggest that the outer sidewall surface is textured and/or sculptured.

Regarding claims 10, 11, and 16, the picture or design depicted in Figure 6 is seen to constitute "artwork" and as noted above, the reference is directed to the formation of multi-colored pictures or designs (Page 3, Lines 5-15 and Lines 40-43).

With respect to claims 12, 14, and 15, one of ordinary skill in the art at the time of the invention would have found it obvious to include lettering and/or a symbol since Leguillon describes the formation of "decorative scenes, multi-color trademarks, and like designs". As to claim 15, a trademark is seen to constitute an advertisement.

As to claim 17-19, the reference broadly teaches the formation of decorative scenes, multi-color trademarks, and like designs- one of ordinary skill in the art at the time of the invention would have found it obvious to form the picture or design of Leguillon as a pin stripe as it constitutes a common design or pattern and furthermore, the particular selection would be dependent on the desired aesthetic effect. In this instance, the specific type of design does not contribute to the mechanical function of the tire. As to claims 17 and 19, the concept of a "raised" area is extremely well known in the tire industry- one of ordinary skill in the art at the time of the invention would have been able to appropriately select the desired aesthetic effect.

Regarding claim 20, the outer surface of Leguillon is configured to remain the same color throughout the lifetime of the tire.

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With respect to claims 22 and 25, the colored rubber extends a certain depth such that the outer surface will eventually (due to wear) be black- in this instance, the change of color is irreversible.

As to claims 27 and 28, Leguillon discloses the application of a multi-colored picture to the sidewall of a tire- in such an instance, some of the sidewall would be the same color as the tread (black) and some of the sidewall would have a different color than the tread. It is additionally noted that the reference teaches the underlying layer(s) can be formed of colored stock such that the tire itself can be a colored tire.

With respect to claim 30, it is well recognized that a tire is mounted on a rim to define a wheel assembly.

As to claims 31-34, the claims fail to further define the structure of the claimed tire article or wheel assembly- the claims are directed to the method of selecting and matching the color of the tire rubber to an additional tire component. It is additionally noted that such a selection is dependent on the desired aesthetic effect.

With respect to claims 35 and 36, as noted above, Leguillon is broadly directed to a method of forming decorative scenes, multi-colored trademarks, and like designs- it is evident that such a description encompasses designs in which the outer surface would be uniformly colored, it being noted that Leguillon also teaches that the underlying sidewall can be formed of a colored stock.

Regarding claims 37-39, the composition of Leguillon includes a coloring additive and forms a patterned/non-uniform colored surface (as depicted in Figure 6).

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As to claim 40 and 41, the coloring agent is dispersed through the entirety of the colored composition and "is capable" of forming a colored composition throughout the depth of the tire.

6. Claim 1, 8-10, 12, 14, 15, 21, 23, 24, 26, 30-36, and 39-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ono (JP 08156501, newly cited). Ono is directed to a tire construction, wherein the sidewall includes a colored picture or colored trademark, such as a logo or a similar mark. The reference further teaches that the "colored" trademark can be formed by including a temperature indicating material or a fluorescent material. As depicted in Figure 2, three trademarks or logos are arranged over the circumferential extent of the tire. While the reference fails to expressly teach the inclusion of such a colored logo over at least 50% of the sidewall outer surface, one of ordinary skill in the art at the invention would have found it obvious to cover at least 50% of the sidewall depending on the desired aesthetic effect. It is emphasized that the degree to which the colored picture covers the tire outer surface represents an aesthetic characteristic that does not contribute to the mechanical function of the tire. Absent any conclusive showing of unexpected results, one of ordinary skill in the art at the time of the invention would have found it obvious to form the colored picture of Ono over at least 50% of the outer sidewall surface.

Regarding claims 8 and 9, the outer tire surface is recognized as being textured and/or sculptured.

As to claims 10 and 16, the above noted logos are seen to constitute "artwork".

With respect to claim 12, trademarks and similar logos are formed with lettering.

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Regarding claims 14 and 15, trademarks and similar logos are seen to constitute “symbols” and “advertisements”.

With respect to claims 21, 23, 24, and 26, the colored picture of Ono comprises either a temperature indicating material (thermally responsive material) or a fluorescent material (device that lights the tire).

With respect to claim 30, it is well recognized that a tire is mounted on a rim to define a wheel assembly.

As to claims 31-34, the claims fail to further define the structure of the claimed tire article or wheel assembly- the claims are directed to the method of selecting and matching the color of the tire rubber to an additional tire component. It is additionally noted that such a selection is dependent on the desired aesthetic effect.

Regarding claims 35 and 36, the colored picture of Ono is seen to be uniform.

With respect to claims 39-42, the colored picture of Ono includes either a temperature indicating additive or a fluorescent additive. As to claim 40, the coloring agent is capable of being fully developed throughout the depth of the tire.

Regarding claims 43-45, the colored picture of Ono changes color with vehicle speed (increased temperature) and thus necessarily changes color as a function of pressure (increase in vehicle speed accompanied by increase in pressure).

7. Claims 1, 3, 4, 6-16, 18, and 30-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyazaki (US 6,235,376, of record). Miyazaki is directed to a pneumatic tire construction in which the sidewall includes a colored picture or photograph (Column 11, Lines 40). As to the portion of the sidewall surface that is



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covered with the above noted colored picture or photograph, one of ordinary skill in the art at the invention would have found it obvious to cover at least 50% of the sidewall depending on the desired aesthetic effect. It is emphasized that the degree to which the colored picture or photograph covers the tire outer surface represents an aesthetic characteristic that does not contribute to the mechanical function of the tire. For example, a user might desire a single picture or photograph to be displayed over the entire circumferential extent of the tire or a user might desire a number of different pictures/photographs. Absent any conclusive showing of unexpected results, one of ordinary skill in the art at the time of the invention would have found it obvious to form the colored picture of Miyazaki over at least 50% of the outer sidewall surface.

Regarding claim 3, it appears that the claim broadly requires a colored layer on any outer surface of the tire and a colored picture on the tire sidewall. In this instance, Miyazaki does not require that the outer sidewall surface to which the colored image is attached is non-colored. Depending on the desired aesthetic effect, one of ordinary skill in the art at the time of the invention would have found it obvious to form the base sidewall composition of Miyazaki from a wide variety of colors, it being emphasized that the formation of colored sidewall stocks is extremely well known in the tire industry. Furthermore, it is extremely well known in the tire industry to form the outer tread surface as a colored layer in order to provide a wear indicating means. Thus, one of ordinary skill in the art at the time of the invention would have found it obvious to form a tire having a colored picture and a colored layer. Lastly, Miyazaki teaches that the base

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layer 16, upon which the colored picture or display layer 14 is mounted, can include a coloring additive (Column 10, Lines 60-65)- such a layer can be viewed as a color layer.

With respect to claims 4 and 6, as noted above, the degree to which the colored picture is arranged over the sidewall does not contribute to the mechanical function of the tire- it represents an aesthetic design choice that would have been well within the purview of one of ordinary skill in the art at the time of the invention depending on the desired aesthetic effect.

Regarding claims 8 and 9, a tire is recognized as having a texture and/or sculptured outer surface.

As to claims 7, 10-12, and 14-16, the colored region of Miyazaki can be at least one of pictures, characters, symbols, photographs, and patterns- it is evident that the respective images can be formed of at least one color (e.g. photographs are generally multi-colored).

With respect to claims 13 and 18, the content of the picture or photograph does not contribute to the mechanical function of the tire- in this instance, the selection of a wide variety of images or designs, including a camouflage design, would have been well within the purview of one of ordinary skill in the art at the time of the invention.

With respect to claim 30, it is well recognized that a tire is mounted on a rim to define a wheel assembly.

As to claims 31-34, the claims fail to further define the structure of the claimed tire article or wheel assembly- the claims are directed to the method of selecting and

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matching the color of the tire rubber to an additional tire component. It is additionally noted that such a selection is dependent on the desired aesthetic effect.

***Response to Arguments***

8. Applicant's arguments filed October 21, 2005 have been fully considered but they are not persuasive. It is initially noted that the rejections in view of Sievi-Korte, Rogal, and Creasey have been withdrawn in view of applicant's amendment.

In regards to Miyazaki, the reference positively teaches a tire construction in which a label incorporating a display layer is incorporated on the tire sidewall. In this instance, the reference teaches that the display layer may include "at least one of " pictures, characters, symbols, photographs, and patterns"- at a minimum, the pictures and photographs can be viewed as colored pictures. Applicant contends that a special three-dimensional label would be required if the label was to extend over the entire circumference of the tire. However, it does not appear that Miyazaki is restricted to a "small" label and furthermore, it does not appear that Miyazaki is restricted to a single label on the sidewall. If a user desired to have an image over the entire extent of the tire, the label would simply formed as an annular label (function of the shape of the base layer). Additionally, applicant contends that Miyazaki fails to teach a colored layer in combination with a colored picture. As set forth above, Miyazaki teaches that the base layer can include a colored pigment.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Justin R. Fischer** whose telephone number is **(571) 272-1215**. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571) 272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Justin Fischer

November 18, 2005